IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 218 of 2005
With
APPEAL FROM ORDER No. 201 of 2005
With
APPEAL FROM ORDER No. 234 of 2005
With
CIVIL APPLICATION No. 6861 of 2005
In CROSS OBJECTION (STAMP NUMBER) No. 174 of 2005
With
CIVIL APPLICATION No.3862 of 2005 in A.O. No. 201 of 2005,
CIVIL APPLICATION No. 4220 of 2005 in A.O.No.234 of 2005 and
CIVIL APPLICATION No. 4122 of 2005 in A.O. No.218 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 & 2: YES , 3 to 5 NO

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AHMEDABAD MUNICIPAL CORPORATION & 1 - Appellant(s)

Versus

GAUTAMBHAI S PATEL THRO' PRESIDENT & 15 - Defendant(s)

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Appearance :

MR KS NANAVATI, MR MIHIR JOSHI and MR MITUL K SHELAT for Appellants
MR SIRISH JOSHI, MR HARDIK C RAWAL and MR NMESH V DIXIT for Defendant(s) : 1-2
RULE SERVED for Defendant(s) : 3,5 - 10,12 - 13, 16,
RULE UNSERVED for Defendant(s) : 4, 11, 14,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/09/2005

CAV JUDGMENT

1. This group of appeals raising common and connected issues were heard together, in view of the urgency of the matter, for final disposal. Appeals No.201 and 234 of 2005 are preferred from the common order dated 4.3.2005 below notice of motion in Civil Suits No.2954 and 3216 of 2004, whereas Appeal No.218 of 2005 is preferred from the order dated 9.4.2005 below notice of motion Ex.6/7 in Civil Suit No.2619 of 2004. All the appeals are filed by Ahmedabad Municipal Corporation ('AMC' for short) against the co-operative credit societies lending loans to the employees of AMC.

2. The grievance of the respondents, original plaintiffs, in the first mentioned two suits was against the communication dated 8.11.2004 of the appellant informing that deductions from wages in respect of the loans advanced by the plaintiffs would be stopped by the appellant with effect from 1.11.2004. The City Civil Court, by the impugned order, directed the appellant not to act upon that

order and communication from March, 2005 onwards and allowed the respondent-societies to deduct the installments from respective salary accounts of its member-workmen who had taken loan. In the third appeal, the suit is filed by the Presidents of the co-operative credit societies of the workmen as such and as tax payers of Ahmedabad, calling into question the setting up of a welfare fund by AMC to advance loans to its employees by its welfare cell. Remarkably, no workman is a party to any of the proceedings and the tussle obviously is between the lending agencies who, in substance, claim not just parity but priority and precedence in the matter of recovering the loan amounts by direct deduction from the salary of the borrowing workmen. Pending hearing of the main suits, this Court is called upon to examine whether the impugned orders granting interim relief to the respondents required any interference.

3. It is the case of the appellant that the loans granted by the respondents to its employees carried interest at the rates upto 15% which are

much higher than the current rates of interest. Therefore, a welfare fund came to be set up with the approval of the General Board of AMC. Then, the Deputy Municipal Commissioner (Finance) sought details of loans granted by the co-operative societies, like the respondents, and also called for applications from the workmen who would like to repay the loans of the credit society by taking loans on easier terms from the employees' welfare fund of AMC. Since the co-operative societies did not submit details of the loans advanced by them, the impugned notice/order/letter dated 8.11.2004 to stop direct deductions from the wages had to be issued. It was also contended on behalf of the appellant-AMC that some of its employees were in such critical position that after statutory deductions from the total salary, major part of the remaining salary would go in repayment of the installments of loans given by the co-operative societies, after which very small amounts, at times only Re.1/-, would be carried by the workman to his home. It is also contended that the employees' co-operative credit societies were

exploiting by charging interest at exorbitant rates and indulging in many irregularities including multiple loans by several societies which required the AMC to step in and save its employees from the debt-trap.

4. The respondent-societies having perceived the danger to their existence by the impugned circular appeared to have approached the Court. Besides attributing motives to the officials of the AMC, it was contended for the respondents that it was their statutory right to recover by, and it was the statutory obligation of the appellant to make, direct deductions from the wages of the workmen as per the demands of the respondent societies; and creation of a welfare fund by the employer himself, or the requirement of deduction therefor cannot derogate from that legal position. In support of the impugned orders, it was also submitted on behalf of the respondents that the balance of convenience was heavily in favour of the respondents insofar as, having statutory obligations to charge interest at

certain rates and to repay the loans obtained by them from the apex co-operative banks, they cannot survive and would face default and liquidation without regular repayment from the workmen-members. It was also submitted that the respondents were co-operative credit societies of the workmen themselves and the profits, if any, also go to its members, provided they are not wiped out of existence by the welfare fund of the AMC funded and inspired by commercial banks in an unholy alliance with the officials of the AMC whose offer of easier terms was a ruse insofar as the interest at lower rates on the total amount of loan till final payment worked out to a greater burden and higher rate of interest on reducing balance.

5. Before grappling with the above set of facts and contentions, it would be appropriate to refer to the relevant statutory provisions. At this stage, the legality of creation of the welfare fund by the AMC as an employer is not in serious controversy, although the respondents have taken out their cross-

objections in filing of which there is delay and condonation thereof is the subject-matter of Civil Application No.6861 of 2005. Direct deduction by the employer from the wages of the workmen concerned is, in the present context, governed by the following provisions of the Payment of Wages Act, 1936 and the Gujarat Co-operative Societies Act, 1961.

PAYMENT OF WAGES ACT, 1936:

S.7 Deductions which may be made from wages:

(1) Notwithstanding the provisions of sub-section (2) of Sec.47 of the Indian Railways Act, 1890, the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act.

Explanation I-. Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

Explanation II-. xxx xxx xxx

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

(a) to (e) xxx xxx xxx

(f) deductions for recovery of advance of whatever nature (including advances for travelling allowance or conveyance allowance) and the interest due in respect thereof, or for

adjustment of over payments of wages;

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(g) to (i) xxx xxx xxx

(j) deductions for payments to co-operative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;

(k) to (q) xxx xxx xxx

(3) Notwithstanding anything contained in this Act, the total amount of deductions which may be made under sub-section (2) in any wage-period from the wages of any employed person shall not exceed-

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under cl. (j) of sub-section (2), seventy-five per cent of such wages, and

(ii) in any other case, fifty per cent of such wages;

Provided that where the total deductions authorized under sub-section (2) exceed seventy-five per cent, or, as the case may be, fifty per cent, of the wages, the excess may be recovered in such manner as may be prescribed.

(4) Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Indian

Railways Act, 1890.

Sec.13 Deductions for payments to co-operative societies and insurance schemes-

Deductions under cl.(i) and cl.(k) of sub-section (2) of Sec.7 shall be subject to such conditions as the State Government may impose.

Sec.20 Penalty for offences under the Act.

(1)Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, Sec.5 except sub-section (4) thereof, Sec.7, Sec.8 except sub-section (8) thereof, Sec.9, Sec.10 except sub-section (2) thereof, and Secs.12 to 13, both inclusive, shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

(2)to (4) xxx xxx xxx

(5)If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees.

.....

(6)If any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.

Sec.23 Contracting out-

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Sec.26 Rule-making-power-

(1)xxx xxx xxx
(2)The State Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

The relevant provisions of the **Gujarat Co-operative Societies Act, 1961** are as under:

Sec.50 Deduction from salary to meet society's claim in certain cases:

(1) A member of a society may execute an agreement in favour of the society, providing that his employer shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement, and to pay to the society the amount so deducted in satisfaction of any debt or other demand of the society against the members.

(2) On the execution of such agreement, the employer shall, if by a requisition in writing so required by the society and so long as the society does not intimate that the whole of such debt or demand has been paid, make the deduction

in accordance with the agreement notwithstanding anything to the contrary contained in the Payment of Wages Act, 1936 and pay the amount so deducted to the society, as if it were a part of the wages payable by him as required under the said Act on the day on which he makes payment. In making such deduction and payment, it shall not be open to the employer to question the validity or otherwise of such debt or demand.

(3)If after receipt of a requisition made under sub-section (2) the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned, or makes default in remitting the amount deducted to the society, the employer shall be personally liable for the payment thereof; and the amount shall be recoverable on behalf of the society from him as an arrear of land revenue on a certificate being issued by the Registrar after holding such inquiry as he deems fit, and the amount so due shall rank in priority in respect of such liability of the employer as wages in arrears. A certificate so issued by the Registrar shall not be questioned in any court.

Rule 24-A of the Gujarat Co-operative Societies Rules, 1965 may also be reproduced hereunder since it is relied upon for the appellant:

Rule 24-A: Restrictions on borrowing from more than one credit society:

(1)Every person who is a member of more than one society (other than a Land Development Bank or a Central Bank or Marketing Society) dispensing credit shall, unless he has already done so, make a declaration in Form DD that he will borrow from, or accept the responsibility of a surety in one

society only to be mentioned in the declaration and shall send a coy of such declaration duly attested to all other societies through such Society.

(2)any person, who continues to be a member of more than one such society without complying with the provisions of sub-rule (1) shall be liable to be removed from the membership of any or all such societies upon receiving a written requisition from the Registrar to the effect;

Provided that .....xxx xxx xxx

(3) The Registrar may, for reasons to be recorded in writing, exempt any person or persons from the operation of this rule, or prohibit any person or persons from the borrowing from more than one society, notwithstanding that permission of the society under proviso to sub-rule (2) has been obtained by him.

6. The above legal provisions have reached at least twice the anvil of this Court and the observations made in the decisions which were relied may be quoted hereunder.

6.1 In **DABHOI MUNICIPALITY v. V.R.NAYAK, DISTRICT REGISTRAR OF CO.OP. SOCIETIES, BARODA AND ANR. [1971 GLR 260],** the Division Bench observed in paragraph 5 as under:

“5. We may also point out that the power of the Registrar to invoke the special machinery under

sec.50 (3) of the Gujarat Act comes into play only if the employer at any time fails to deduct the amount specified in the requisition made under sub-sec. (2). Now, the word "fails" in sub-sec. (3) in the context in which it occurs, must connote a willful or intentional default or default without sufficient cause on the part of the employer and not merely a physical failure to deduct after intimation in the form of the requisition made by the Society. This construction of the sub-section is warranted (i) because of the serious consequences which ensue upon the issuance of the certificate and (ii) because failure without sufficient cause to comply with the requisition under sec. 50 (2) is an offence punishable under sec. 147 (1) (c) read with sec. 148 (1) (c). If, as in the present case, there was a bona fide contention by the Municipality that in view of the legal position as it emerged from the decision of the Division Bench in Majoor Sahkari Bank's case (supra), because the requisition by the Society to the employer was not valid inasmuch as there was no adjudication regarding the debt, it could not be said that there was a wilful default on the part of the employer in deducting the amount. The consequences of the order passed by the Registrar under sec. 50 (3) are very serious and the amount becomes recoverable on behalf of the Society as an arrear of land revenue on a certificate being issued by the Registrar. The Registrar has, at the time of such enquiry contemplated by sec. 50 (3), to satisfy himself that there is failure in the sense of wilful or intentional default or default without sufficient cause on the part of the employer in deducting the amounts specified in the requisitions by the Society and he has also to satisfy himself whether the requisition itself was a legal requisition or not. On both these points in the instant case the petitioner Municipality had urged contentions before the Registrar, the first respondent herein; but overlooking the requirements and conditions precedent for the exercise of his power before

granting the certificate, the Registrar in the instant case has issued the certificate."

6.2 In the second judgment of this Court in **BARODA SPG.& WVG. MILLS CO.LTD. v. BARODA SPG.& WVG.MILLS (RAJRATNA SHETH ZAVERCHAND LAXMICHAND) CO-OPERATIVE CREDIT SOCIETY LTD, BARODA & ANR. [1976 GLR 555]** in the context of a co-operative society claiming the amounts required to be deducted by the company in liquidation, the Court made the following relevant observations:

"9. .....Conflict between clause (j) and sec.24-A is more apparent than real and in such a situation, well-known canon of construction would be attracted. Harmonising two provisions without doing violence to the language of the statute is quite well-known. Central enactment namely Payment of Wages Act postulated that clause (j) would apply only in respect of those co-operative societies which are approved by the State Government; but the State Legislature presumably was quite aware of this specific provision while enacting sec.24-A and clearly manifested its intention by not employing therein any words of limitation or qualification such as approval of the society by the State Government which would unmistakably indicate that the State Legislature wanted to clothe every society with the approval as contemplated by sec. 7 (j) of the Payment of Wages Act, because it was open to the State Government to approve all co-operative societies

for the purpose of sec. 7 (j) of the Payment of Wages Act. Instead of the Executive Government approving all the Co-operative Societies in the State by a notification the legislature of the then Bombay State, by introducing sec.24-A gave concrete form and shape to the provisions contained in sec. 7 (j) of the Payment of Wages Act by giving statutory recognition to the requirements of sec. 7 (j) by enacting sec. 24-A in the Co-operative Societies Act enabling a member of any co-operative society to execute an agreement in favour of the society provided that the society would be in a position to recover dues of the member from the employer of the member by making appropriate deductions from the wages or salary of such member by his employer and that such deduction would be permissible deduction within sec. 7 (j) of the Payment of Wages Act. When Bombay Co-operative Societies Act, 1925 was repealed by sec.169 of the Gujarat Co-operative Societies Act, 1961 which came into force from 1st March 1962, sec.50 (1) of the Gujarat Co-operative Societies Act, 1961 in terms re-enacted sec.24-A (1) and while enacting sec.50 (1) in its present form, the State Legislature took note of the provisions of the Payment of Wages Act, 1936 by providing sub-sec. (2) thereto as under.....”

“.....Sub-sec. (2) thus enacts a fiction for the limited purpose of meeting with the requirement of the provisions of the Payment of Wages Act, 1936 in that not only deduction made by the employer from the wages or salary of his employee who is member of the co-operative society and who has entered into an agreement with the society, would be permissible deduction but his employer shall be competent to deduct from his salary or wages payable to him such amount as may be specified in the agreement, fiction being that the payment to the society of the amount deducted by the employer in the aforementioned circumstances would be a payment made to the

employee not directly to him but to the society to whom employer had to pay that much amount. In other words, fiction would be that the payment to the society of the amount so deducted would be deemed to be payment of the wages made to the workman. Whatever little conflict that came to surface while reading sec.7 (j) of the Payment of Wages Act with sec.24-A of the Bombay Co-operative Societies Act vanishes into thin air once Bombay Co-operative Societies Act, 1925 is repealed and replaced by the relevant revisions contained in sec. 50 (1) of the Gujarat Co-operative Societies Act. Therefore, viewed from either angle, the deduction from the wages of an employee who is a member of a co-operative society at the instance of the co-operative society for satisfying the debt or demand of the society from the member by the employer of such member pursuant to the requisition made by the society would be wholly covered by the provisions of the Payment of Wages Act and would be legal and valid....”

“.....In fact an agreement between the society and its member as envisaged by sec. 50 (1) would impose a statutory liability on the employer of such member to make deduction from the wages or salary payable to such person pursuant to a requisition made by the Co-operative Society of which such employee is a member. Right and obligation of the society and employer originate in an agreement between a co-operative society and its member but result into a statutory liability of the employer of such member of a co-operative society.”

Referring to **DABHOI MUNICIPALITY** (supra), it is observed in paragraph 11 of the judgment as under:

“There is absolutely no merit in this contention because the question of adjudication of a debt or demand may only arise in case where the debt or

demand is not admitted, or to be specific, where it is disputed. In both the aforementioned cases when the employer attempted to deduct certain amount from the wages or salary of its employees who were members of the society on the requisition of the society, the employees disputed the demand contained in the requisition submitted by the society and in this context it was held that a mere requisition by the society for the purpose of deduction from the wages or salary of its member by the employer of such member is not sufficient because there must at the time of the requisition, be an outstanding debt or demand and payments are to be made only in satisfaction of such outstanding debt or demand; and once that is disputed, sec.24-A of 1925 Act or sec.50 of the 1962 Act cannot be invoked, unless dispute in respect of the debt or demand is adjudicated upon. It is undoubtedly true that where a debt or demand is disputed, liability to pay and recovery in respect of it could never be pursued until the dispute is decided by process of adjudication. <u>But where debt or demand itself is admitted, there can never arise a question of adjudication of an admitted liability. ....”</u>

In the facts and context of that case, it was held that:

“....In other words, it would mean that those employees of the company who were members of the society received their full pay-packet and handed over a part of the wages to the company to pay the same on their behalf to the society and the company undertook to do that work. The company accordingly would acquire the character of an agent of the society to effect recovery on behalf of the society and pay the amount to the society.

If the amount thus came into the hands of the company, it would be crystal clear that the company would have no legal title to the money so collected by it nor any beneficial interest therein. The company would merely be a custodian with an obligation to hand it over to the rightful owner the society. The amount would retain the character of wages already earned and merely because the company deducted the amount as it was permissible, it did not change the character qua the company. But in view of the tripartite arrangement and statutory liability of the company as employer to remit the amount to the society, the society had legal title to the amount so deducted. The society would thus acquire the character of a principal. In purely legal parlance the moment deduction was made by the company from the wages and salary for the sole purpose of remittance of the amount to the society, the society would be the principal and the company would be the agent.....Viewed from this angle, the company held the money as mere custodian, without any title to it, for and on behalf of the society and if that be so, the company was bound to hand over the amount collected by it by way of deductions from wages and salary of its employees to the society as and when collected or within reasonable time thereafter. But even if the amount remained with the company who would be an agent of the society, the amount would not be the property of the company and company would be bound to hand over the amount to the society before any distribution of the assets of the company could be made."

(emphasis supplied)

7. The above decisions of this Court elaborate and dispose the first contention of the appellant that the demand for deduction by the respondents was required to be adjudicated first because nothing is

pointed out from the record to suggest any dispute about the debt of the employees and the demand of the respondents. Peripheral to that main contention were the arguments that the employer could not be denied the right to object, for valid reasons, the agreement between its workmen and the co-operative society and that the remedy of the respondents lay in approaching the Registrar under sub-section (3) of section 50 of the Gujarat Co-operative Societies Act, 1961. Those arguments pre-suppose a genuine dispute about the debt and demand which is non-existent in the facts of the present case and the employer is expressly debarred from questioning the validity or otherwise of such debt or demand as provided in sub-section (2) of Section 50 of the Gujarat Co-operative Societies Act, 1961. Therefore, the argument that under Rule 24-A of the Gujarat Co-operative Societies Rules the respondents could not have advanced loans to such employees as were members of more than one co-operative societies is also not available to the employer-AMC. Besides that, the employer cannot legally avoid its statutory liability of making

deductions according to the requisition of the co-operative societies merely by stating that the co-operative societies were committing some illegality in advancing loans or that it had created a lien or prior right on the wages of the employees. If such pleas were permitted, it would only nullify the effect and rigor of the mandatory provisions of the Payment of Wages Act, 1936 read with the above provisions of the Co-operative Societies Act, 1961.

8. The second main contention for the appellant was that, while a special fund and huge liabilities were created by the AMC in the interest and for the welfare of its workmen, the respondent credit societies were indiscriminately granting loans to its workmen without disclosing details thereof to the AMC and creating a situation where many workmen could carry home an actual pay-packet of a few rupees. That situation threw up the questions about validity of the provisions of section 50 of the Gujarat Co-operative Societies Act, 1961 since application thereof resulted into repugnancy with the provisions

of the Payment of Wages Act which is a Central legislation. It was submitted that, as per the provisions of sub-section (3) of section 7 of the Payment of Wages Act, 1936, the total deduction from the wages of an employed person cannot exceed 75% of such wages where deductions are wholly or partly made for payments to co-operative societies under clause (j) of sub-section (2). It was, therefore, submitted that the provisions of section 50 of the Co-operative Societies Act must be held to be invalid and inoperative to the extent of the repugnancy. However, this issue is not required to be decided and left open in view of the concession made on behalf of the respondents that the workmen must be allowed, in any case, to carry home at least 25% of the wages. However, factually, the crunch was caused due to deductions made for more than one societies over and above the installments deducted in re-payment of the loans taken by the workmen from the welfare cell of the AMC. Therefore, by way of further concession, it was submitted on behalf of the respondents that they will not advance any further loans to the workmen

till all the existing loans were re-paid with interest and each of the respondents will not advance any loan till any amount was remaining due by a particular workman to another credit society. It was also stated that the maximum amount to be deducted upon requisition of any of the societies may be restricted to Rs.1,500/- so as to ensure compliance with the aforesaid provisions of section 7 (3) of the Payment of Wages Act, 1936. This interim arrangement would also be consistent with the human and fundamental rights of the workmen as enshrined in and expounded through Articles 21 and 23 of the Constitution by ensuring that the employees are not required to work only for repayment of loans.

9. Viewed against the above background of facts, legal provisions, contentions and concessions, the pure question of law that remains is whether the appellant-employer-AMC can legally refuse to make deductions from the wages of its employees, in the face of undisputed debt and demand from the respondents, on the ground that it is entitled to

make deductions for recovery of loans made from its welfare fund ? The simple answer would be that, while the demand of the respondents is backed by the express statutory provisions of Section 50 of the Gujarat Co-operative Societies Act creating a statutory obligation, personal liability and penal consequences, the provisions for recovery of loans from the welfare fund are only permissive and subject to the overall requirement of the employed person not suffering more than 75% of deductions even after payments due to the co-operative societies under clause (j) of sub-section (2). Therefore, the amounts required to be deducted and paid to the societies under the provisions of sub-section (2) of section 50 clearly enjoy priority over the deductions for recovery of loans from the welfare fund. And, by creating a fund and making contractual commitments to commercial banks on the basis of or along with agreements with the employees or otherwise, the AMC cannot nullify the statutory scheme of assured re-payment to the co-operative societies. If it seeks to do so, it creates a liability against itself under

the express provisions of sub-section (3) of section 50 of the Co-operative Societies Act. Apart from that legal position being clear, the approach of the appellant, an institution of local self-government, in rushing to the Court at public expense against an interim order only asking it to discharge its statutory obligation carries a tinge of absurdity.

10. Several other technical and formal objections were raised on behalf of the appellant and elaborately argued by the learned counsel, although all of them do not appear to have been agitated before the trial Court. It was submitted that respondents had efficacious remedy available under sub-section (3) of section 50 for recovering the debt in case of willful default by the AMC and, therefore, an injunction could not be granted under section 41 of the Specific Relief Act, 1963. In support of that submission, the learned counsel relied upon the judgments of the Supreme Court in **The Municipal Corporation of Delhi v. Suresh Chandra Jaipuria and another [AIR 1976 SC 2621], Cotton**

Corporation of India Ltd. vs. United Industrial Bank Ltd. [AIR 1983 SC 1272] and Sunil Kumar and another vs. Ram Prakash and others [(1988) 2 SCC 77. It was submitted that the power to grant temporary injunction was conferred in aid of and as ancillary to the final relief that may be granted. The learned counsel relied, in that context, upon the observations of the Delhi High Court in **Raman Hosiery Factory, Delhi and others v. J.K.Synthetics Ltd. And others [AIR 1974 Delhi 207] and Prem Chand v. Manak Chand and others [AIR 1997 Raj. 198].** It was submitted, with the support of the judgment of the Supreme Court in **Union of India v. Modiluft Ltd. [(2003) 6 SCC 65],** that a mandatory injunction amounting to allowing the entire suit could not be granted at the interlocutory stage even in absence of any special facts warranting grant of such injunction and in view of the available equally efficacious remedy of approaching the Registrar under section 50 (3) of the Co-operative Societies Act.

10.1 As against the above submissions, it was submitted for the respondents that the provisions of Rules 1 and 2 of Order 39 read with Section 151 of the Code of Civil Procedure, 1908 clearly envisage grant of temporary injunction in any suit for restraining the defendant from committing a breach of contract or other injury of any kind. Besides that, the express provisions of Sections 36, 37, 38 and 39 of the Specific Relief Act, 1963 clearly envisage grant of temporary injunction by way of preventive or mandatory relief to prevent breach of an obligation and compel performance of the requisite acts. Relying upon the Constitution Bench judgment of the Supreme Court in **RAM SWARUP AND OTHERS v. SHIKAR CHAND AND ANOTHER [AIR 1966 SC 893],** it was submitted that jurisdiction of the Civil Courts to deal with civil causes can be excluded by the Legislature by special Acts which deal with special subject-matters; but the statutory provision must expressly provide for such exclusion, or must necessarily and inevitably lead to that inference. A point which is often treated as relevant in dealing with the question about the

exclusion of Civil Courts' jurisdiction is whether the special statute provides for adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions? The judgment of the Supreme Court in **RAJA JAGDISH PRATAP SAHI v. STATE OF UTTAR PRADESH [AIR 1973 SC 1059]** was relied upon for the proposition contained therein that once a debt was created, the State had the right to recover it by any of the modes open to it under the general law, unless as a matter of policy only a specific mode to the exclusion of any other was prescribed by the law. And, another judgment of the Supreme Court in **STATE OF TAMIL NADU v. RAMALINGA SAMIGAL MADAM [AIR 1986 SC 794]** was relied upon for the proposition that even where finality was accorded to the orders passed by a special Tribunal, one will have to see whether such special Tribunal had the powers to grant reliefs which Civil Court would normally grant in a suit and, if the answer is in the negative, it would be difficult to imply or infer exclusion of civil Court's jurisdiction. It was, on that basis,

submitted that merely because an alternative remedy in case of default and relief of restitution were provided by virtue of the provisions of sub-section (3) of section 50 of the Co-operative Societies Act, the remedy of approaching the Civil Court for appropriate injunction and its jurisdiction were not ousted.

10.2 It was also argued for the appellant that the original suits were incompetent and not maintainable without notice required to be served under Section 487 of the Bombay Provincial Municipal Corporation Act, 1949 (BPMC Act). Per contra it was argued for the respondents that such notice was required when suit was in respect of any act purported to be done in pursuance of or the intended execution of the BPMC Act or in respect of any alleged neglect or default in the execution of that Act. But in the facts of the present case, the action of refusing to make deductions was neither taken nor purported to be taken pursuant to or under any provision of the BPMC Act. Instead, it was an

illegal act amounting to an offence and hence absence of notice did not bar the suit, according to the submission. The respondents relied upon the judgment of this Court in **M/S.HABIBBHAI GULAM MOHMAD v. THE MUNICIPAL CORPORATION, AHMEDABAD [1962 GLR 924].**

11. As regards the balance of convenience, it was submitted for the appellant that the AMC has already created the welfare fund and advanced amounts to its employees to the tune of total Rs.100 crores with commitments of repayment to the lending agencies; that the impugned circular/letter dated 8.11.2004 was already implemented and, therefore, the grant of impugned injunction could cause enormous hardships either to the employees concerned or the appellant. As against that, it was submitted for the respondents that they themselves were also under a statutory obligation to repay the loans taken by them and pay the wages to its own employees out of the deductions in repayment, failing which they could face liquidation and closure and, therefore, the

balance of convenience was clearly in favour of the respondents justifying the grant of temporary injunction.

12. Considering the above facts and contentions, it appears at this stage of deciding upon the issue of interim relief that, although there are triable issues of fact and law, *prima facie,* the suits of the respondents are maintainable and mandatory injunction to enforce the statutory obligation against the AMC could legally be issued by way of interim relief, in the facts and context of the cases which are over-lapping. Therefore, Appeals from Order No.201 of 2005 and 234 of 2005 against the communication dated 8.11.2004 are required to be rejected. The order impugned in Appeal No.218 of 2005 directing the appellant to deduct the amounts of installments from the wages of the employees also does not require any interference. In fact, the Court has, in that impugned order, not granted the respondent's prayer in terms of paragraph 12 (2),

i.e. prohibition of loans through the welfare fund. The respondent's cross-objections against rejection of that prayer could have been entertained after condoning the delay of two days in filing thereof, but the main prayer therein having been found to be premature, the application for condonation of delay is rejected.

13. However, in view of the concessions made on behalf of the respondents, in the interest of justice and the employees concerned and to ensure smooth repayment of all the loans advanced by all the parties, the appeals are, exercising the power of this Court under Section 151 of the Code of Civil Procedure, partly allowed with the following modifications and directions:

(a) The AMC shall make deductions in accordance with the requisition of the respondent-societies and pay the amounts so deducted to them subject to the limit of Rs.1,500/- per month per employee concerned;

(b) The AMC shall ensure that the employees concerned carry home at least 25% of their wages every month after all deductions;

(c) The respondent societies shall not advance any further loans to any employee till all amounts due against his existing loan from any of the respondents are repaid. And, none of the respondents shall advance any loan to any employee of the AMC till he owes any amount to any other co-operative credit society or co-operative bank.

(d) The AMC shall, subject to observation of the overall limit of total deductions upto 75% of the wages, be entitled to recover the installments in repayment of the loans advanced from its welfare fund.

14. The appeals are accordingly partly allowed and the impugned orders are modified to the aforesaid

extent with no order as to costs. Civil Application No.6861 of 2005 in Cross Objection (Stamp) No.174 of 2005 is disposed as rejected. The civil applications praying for injunction of the impugned orders do not survive and stand disposed in terms of the above order.

Sd/-

(D.H.WAGHELA, J.)

The learned counsel for the appellant requested to stay the operation of this order, particularly in view of the fact that a qualified interim relief in Appeal from Order No.218 of 2005 was operating during the pendency and hearing of the appeal. However, in view of the final disposal of the appeal and the arrangement recorded hereinabove, there is no justification for granting that request. Accordingly, the interim relief as prayed or extension of the interim relief is refused. D.S. permitted today.

Sd/-

(D.H.WAGHELA,J.

(KMG Thilake)